

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LG CAPITAL FUNDING, LLC,

Plaintiff,

20-cv-4882 (PKC)

-against-

ORDER

BLUE SPHERE CORP.,

Defendant.
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CASTEL, U.S.D.J.

Plaintiff LG Capital Funding, LLC (“LG”) moves for the entry of default judgment against defendant Blue Sphere Corp. (“Blue Sphere”) and an award of liquidated damages and attorneys’ fees. The motion will be granted.

LG commenced this action when it filed a complaint on June 25, 2020. (Docket # 1.) The Complaint brings claims for breach of contract and unjust enrichment, as well as a separate contractual claim for reasonable attorneys’ fees and costs.

The Complaint alleges that Blue Sphere issued a 12% convertible redeemable note to LG in the amount of \$78,750, with a maturity date of May 11, 2019 (the “Note”). (Compl’t ¶¶ 7, 11.) LG then wired \$78,750 to Blue Sphere and its counsel. (Compl’t ¶¶ 9-11 & Ex. F.) The Complaint alleges that on April 1, 2019, Blue Sphere caused an event of default to occur after it filed for the delisting of its common stock, and later caused separate events of default by failing to remit payment to LG on the Note’s maturity date. (Compl’t ¶¶ 17-22.) The Note provides that if an event of default occurs, post-default interest is to accrue at a rate of 24% per annum. (Compl’t ¶ 12.) LG alleges that Blue Sphere failed to tender the payment on the Note’s maturity date. (Compl’t ¶ 22.) It states that, as of October 30, 2020, Blue Sphere has

made no payment on the Note's outstanding principal or accrued interest. (Lerman Dec. ¶ 25.) LG asserts that, as of October 30, 2020, it is owed \$120,112.97 in damages and seeks entry of judgment in that amount, plus costs and attorneys' fees. (Pargament Dec. ¶ 2; Lerman Dec. ¶ 29.)

Subject matter jurisdiction is premised on diversity of citizenship, with all members of the plaintiff LLC alleged to be New York citizens and defendant Blue Sphere alleged to be a Nevada corporation with its principal place of business in North Carolina. (Compl't ¶¶ 1-3.)

LG effectuated service of process on June 30, 2020 through personal service on Blue Sphere's registered agent. (Docket # 8.) Blue Sphere did not thereafter answer or appear, and the Clerk issued a Certificate of Default on September 9, 2020. (Docket # 11.)

LG's motion for default judgment will be granted as to liability. When a defendant defaults, the well-pleaded allegations of a complaint are deemed to be admitted for liability purposes. See, e.g., Vera v. Banco Bilbao Vizcaya Argentaria, S.A., 946 F.3d 120, 135 (2d Cir. 2019). Here, the Complaint adequately alleges that the parties agreed to the terms of the Note, and that LG performed by disbursing payment to Blue Sphere. (Compl't ¶¶ 9, 11.) A copy of the Note is attached to the Complaint at Exhibit C. The Complaint alleges the occurrence of events of default under the Note and Blue Sphere's failure to remit payment to LG on the Note's maturity date. (Compl't ¶¶ 20, 22, 24.)

The Court also concludes that LG is entitled to damages, including default interest accruing at the rate of 24% per annum, commencing from the event of default on April 1, 2020. Pursuant to the Note's express terms, an "Event of Default" occurs if "[Blue Sphere] shall have its Common Stock delisted from an exchange" (Compl't Ex. C § 8(i).) The Note further

provides that “[u]pon an Event of Default, interest shall accrue at a default interest rate of 24% per annum or, if such rate is usurious or not permitted by current law, then at the highest rate of interest permitted by law.” (*Id.* § 8.) The Note separately provided for 12% interest per annum on any unpaid principal balance. (*Id.* § 4(b).) As of October 30, 2020, LG calculates its damages to total \$120,112.97, consisting of \$78,750 in principal, \$8,284.93 in regular interest at a rate of 12% per annum, and \$33,078.04 in default interest at a rate of 24% per annum. (Pargament Dec. ¶ 14; Lerman Dec. ¶ 29.) Because LG’s damages can be calculated based on the Note and the Complaint’s well-pleaded allegations, a damages inquest is unnecessary. Default judgment will therefore be granted as to LG’s damages.


LG also seeks attorneys’ fees and expenses. Section 7 of the Note states that Blue Sphere “agrees to pay all costs and expenses, including reasonable attorneys’ fees and expenses, which may be incurred by [LG] in collecting any amount due under this Note.” Section 7 also provides that if LG commences a proceeding “to enforce any provisions of this note . . . then if [LG] prevails in such action, [LG] shall be reimbursed by [Blue Sphere] for its attorneys’ fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.” The Court concludes that the parties expressly agreed that Blue Sphere would reimburse LG’s reasonable attorneys’ fees and expenses.

LG has submitted attorney billing records and documentation of its expenses, including 30.2 hours of attorney time at an hourly rate of \$250, for a total fees award of \$7,550. (Pargament Dec. Ex. D.) LG seeks \$497.80 in expenses, which consists of a \$400 filing fee and \$97.80 in expenses related to effectuating service of process. (Pargament Dec. ¶ 18 & Ex. E.) The Court concludes that the attorneys’ fees and expenses are reasonable. LG’s application for reimbursement of fees and expenses will therefore be granted.

CONCLUSION.

The motion for entry of default judgment is GRANTED. (Docket # 14.) The Clerk is directed to terminate the motion and to enter judgment for the plaintiff in the amount of \$128,160.77, consisting of \$120,112.97 in damages, \$7,550 in attorneys' fees and \$497.80 in expenses.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
December 8, 2020